

AMENDED IN ASSEMBLY JANUARY 15, 1998

AMENDED IN ASSEMBLY JUNE 24, 1997

CALIFORNIA LEGISLATURE—1997–98 REGULAR SESSION

## ASSEMBLY BILL

**No. 164**

**Introduced by Assembly Member Knox**

January 27, 1997

---

---

An act to amend Sections 404, ~~404.6, and 405~~ and 404.6 of, and to add Section 4019.1 to, the Penal Code, relating to crimes.

### LEGISLATIVE COUNSEL'S DIGEST

AB 164, as amended, Knox. Incitement to riot: correctional facilities.

~~Existing law provides that every person who with the intent to cause a riot does an act or engages in conduct which urges a riot, or urges others to commit acts of force or violence, or the burning or destroying of property, and at a time and place and under circumstances which produce a clear and present and immediate danger of acts of force or violence or the burning or destroying of property, is guilty of a misdemeanor punishable by a fine not exceeding \$1,000, or by imprisonment in a county jail not exceeding one year, or by both that fine and imprisonment.~~

~~This bill would provide that any person who engages in this conduct is guilty of incitement to riot which is generally punishable as specified above. However, any person who incites to riot in any state prison, county jail, industrial farm,~~

~~or road camp, or any city jail, industrial farm, or road camp, or any juvenile hall, juvenile camp, juvenile ranch, or juvenile forestry camp shall be punished by imprisonment in the state prison for 16 months, or 2 or 3 years, or in a county jail for not more than one year. By increasing the penalty for an existing crime, this bill would impose a state-mandated local program.~~

~~Existing law provides that every person who participates in a riot is punishable by a fine not exceeding \$1,000, or by imprisonment in a county jail not exceeding one year, or by both that fine and imprisonment.~~

~~This bill would provide, in addition, that any person who participates in a riot in any state prison, county jail, industrial farm, or road camp, or any city jail, industrial farm, or road camp, or any juvenile hall, juvenile camp, juvenile ranch, or juvenile forestry camp shall be punished by imprisonment in the state prison for 16 months, or 2 or 3 years, or in a county jail for not more than one year. By increasing the penalty for an existing crime, this bill would impose a state-mandated local program.~~

~~This bill would also provide that any person convicted of inciting to riot or participating in a riot in a state prison or county jail, or any inmate of a local detention facility convicted of the assault or battery of a noninmate if the offense was committed while at, confined in, being conveyed to or from, or under the custody of officials, officers, or employees of a local detention facility, shall forfeit any work performance or good behavior deductions earned against his or her term of imprisonment.~~

*Existing law provides that disturbing the public peace by 2 or more persons acting together and without authority of law is a riot, punishable as a misdemeanor. Existing law also provides that disturbing the public peace may occur in any place of confinement which is defined to include any state prison, county jail, industrial farm, or road camp, city jail, industrial farm, or road camp, juvenile hall, juvenile camp, juvenile ranch, or juvenile forestry camp.*

*This bill would expand the definition of a place of confinement to include any Department of the Youth Authority institution or camp. Because this bill would expand*



*the definition of a crime, it would impose a state-mandated local program.*

*Existing law provides that every person who is found guilty of the offense of incitement to riot is punishable by a fine not exceeding \$1,000 or by imprisonment in a county jail not exceeding one year, or by both that fine and imprisonment.*

*This bill would provide that every person who incites any riot in a place of confinement, as defined, that directly results in serious bodily injury, shall be punished by imprisonment in state prison for a full term of 16 months, or 2 or 3 years. The bill would require that this term run consecutive to any other term of imprisonment. By increasing the penalty for an existing crime, this bill would impose a state-mandated local program.*

*Existing law provides that when a prisoner is confined in specified county facilities, including all days of presentence custodial confinement, 2 days of conduct credits shall be awarded and deducted from his or her period of confinement for each 6-day period served in confinement.*

*This bill would provide that any person convicted of inciting to riot, inciting a riot in specified places of confinement, or of assault or battery of a noninmate, shall forfeit any conduct credits against his or her term of imprisonment.*

*The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.*

*This bill would provide that no reimbursement is required by this act for a specified reason.*

*Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: yes.*

*The people of the State of California do enact as follows:*

1 SECTION 1. Section 404 of the Penal Code is  
2 amended to read:

3 404. (a) Any use of force or violence, disturbing the  
4 public peace, or any threat to use force or violence, if  
5 accompanied by immediate power of execution, by two



1 or more persons acting together, and without authority of  
2 law, is a riot.

3 (b) As used in this section, disturbing the public peace  
4 may occur in any place of confinement. Place of  
5 confinement means any state prison, county jail,  
6 industrial farm, or road camp, or any Department of the  
7 Youth Authority institution or camp, or any city jail,  
8 industrial farm, or road camp, or any juvenile hall,  
9 juvenile camp, juvenile ranch, or juvenile forestry camp.

10 SEC. 2. Section 404.6 of the Penal Code is amended to  
11 read:

12 404.6. (a) Every person who with the intent to cause  
13 a riot does an act or engages in conduct which urges a riot,  
14 or urges others to commit acts of force or violence, or the  
15 burning or destroying of property, and at a time and place  
16 and under circumstances which produce a clear and  
17 present and immediate danger of acts of force or violence  
18 or the burning or destroying of property, is guilty of  
19 incitement to riot.

20 (b) Incitement to riot is punishable by a fine not  
21 exceeding one thousand dollars (\$1,000), or by  
22 imprisonment in a county jail not exceeding one year, or  
23 by both that fine and imprisonment.

24 (c) Every person who incites any riot in a place of  
25 confinement, as defined in subdivision (b) of Section 404,  
26 *that directly results in serious bodily injury*, shall be  
27 punished by imprisonment in the state prison for a full  
28 term of 16 months, or two or three years, which term shall  
29 be consecutive to any other term of imprisonment, shall  
30 commence from the time the person would otherwise  
31 have been released from imprisonment, ~~and shall not be~~  
32 ~~subject to reduction pursuant to subdivision (a) of~~  
33 ~~Section 1170.1, or shall be imprisonment, or shall be~~  
34 punished by imprisonment in a county jail for a  
35 consecutive term not to exceed one year, which term  
36 shall commence from the time the prisoner would  
37 otherwise have been discharged from the jail. Any order  
38 for a consecutive term of imprisonment in a county jail  
39 under this subdivision may be served in the state prison,  
40 commencing at the expiration of any other state prison

1 sentence. For any time credit accumulated pursuant to  
2 Section 2931, 2933, or 4019, not more than 360 days of  
3 credit may be denied or lost for any conviction under this  
4 section.

5 (d) The existence of any fact that would bring a person  
6 under subdivision (c) shall be alleged in the complaint,  
7 information, or indictment and either admitted by the  
8 defendant in open court, or found to be true by the jury  
9 trying the issue of guilt, by the court where guilt is  
10 established by a plea of guilty or nolo contendere, or by  
11 trial by the court sitting without a jury.

12 ~~SEC. 3. Section 405 of the Penal Code is amended to~~  
13 ~~read:~~

14 ~~405. (a) Every person who participates in any riot~~  
15 ~~shall be punished by a fine not exceeding one thousand~~  
16 ~~dollars (\$1,000), or by imprisonment in a county jail not~~  
17 ~~exceeding one year, or by both that fine and~~  
18 ~~imprisonment.~~

19 ~~(b) Every person who participates in any riot in a~~  
20 ~~place of confinement, as defined in subdivision (b) of~~  
21 ~~Section 404, shall be punished by imprisonment in the~~  
22 ~~state prison for a full term of 16 months, or two or three~~  
23 ~~years, which term shall be consecutive to any other term~~  
24 ~~of imprisonment, shall commence from the time the~~  
25 ~~person would otherwise have been released from~~  
26 ~~imprisonment, and shall not be subject to reduction~~  
27 ~~pursuant to subdivision (a) of Section 1170.1, or shall be~~  
28 ~~punished by imprisonment in a county jail for a~~  
29 ~~consecutive term not to exceed one year, which term~~  
30 ~~shall commence from the time the prisoner would~~  
31 ~~otherwise have been discharged from the jail. Any order~~  
32 ~~for a consecutive term of imprisonment in a county jail~~  
33 ~~under this subdivision may be served in the state prison,~~  
34 ~~commencing at the expiration of any other state prison~~  
35 ~~sentence. For any time credit accumulated pursuant to~~  
36 ~~Section 2931, 2933, or 4019, not more than 360 days of~~  
37 ~~credit may be denied or lost for any conviction under this~~  
38 ~~section.~~

39 ~~(c) The existence of any fact that would bring a person~~  
40 ~~under subdivision (b) shall be alleged in the complaint,~~

~~information, or indictment, and either admitted by the defendant in open court, or found to be true by the jury trying the issue of guilt, by the court where guilt is established by plea of guilty or nolo contendere, or by trial by the court sitting without a jury.~~

~~SEC. 4.~~

SEC. 3. Section 4019.1 is added to the Penal Code, to read:

4019.1. (a) Any person specified in subdivision (b) shall forfeit any work performance or good behavior deductions earned pursuant to Section 4019.

(b) This section applies to the following persons:

(1) Any person convicted of a violation of subdivision (c) of Section 404.6 ~~or subdivision (b) of Section 405.~~

(2) Any inmate of a local detention facility convicted of the assault or battery of a noninmate, if the offense was committed while at, confined in, being conveyed to or from, or under the custody of officials, officers, or employees of a local detention facility.

~~SEC. 5.~~

SEC. 4. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.

Notwithstanding Section 17580 of the Government Code, unless otherwise specified, the provisions of this act shall become operative on the same date that the act takes effect pursuant to the California Constitution.